

THE LAW OFFICE OF CATHERINE PARK

2300 M STREET, NW.
SUITE 800
WASHINGTON, D.C. 20037

COPY ORIGINAL

PHONE: (202) 973-6479
FAX: (866) 747-7566

E-MAIL: CATHERINE.PARK@CPARKLAW.COM
WEBSITE: WWW.CPARKLAW.COM

October 16, 2007

FILED/ACCEPTED

OCT 16 2007

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

ATTN: Hillary DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau

RE: Opposition of the Kintzels, Et Al., to the Petition to Intervene As a Party of the National Association of State Utility Consumer Advocates (NASUCA) ; EB Docket No. 07-197; File No. EB-06-IH-5037

Dear Madame Secretary:

Enclosed for filing on behalf of parties Kurtis J. Kintzel, Keanan Kintzel, and all other Entities by which they do business before the Federal Communications Commission, is the Opposition of the Kintzels, Et Al., to the Petition to Intervene as a Party of the National Association of State Utility Consumer Advocates (NASUCA), in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures

No. of Copies rec'd 0+6
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
OCT 16 2007
Federal Communications Commission
Office of the Secretary

| | | |
|-----------------------------------------------|---|------------------------|
| In the Matter of |) | EB Docket No. 07-197 |
| |) | |
| Kurtis J. Kintzel, Keanan Kintzel, and all |) | File No. EB-06-IH-5037 |
| Entities by which they do business before the |) | |
| Federal Communications Commission |) | |
| |) | |
| Resellers of Telecommunications Services |) | |
| |) | |

OPPOSITION OF THE KINTZELS, ET AL., TO THE PETITION TO INTERVENE AS
A PARTY OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES (NASUCA)

Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business (“the Kintzels, et al.”) before the Federal Communications Commission (“FCC”), by and through their undersigned counsel, request that the Petition to Intervene as a Party of the National Association of State Utility Consumer Advocates (NASUCA) be denied for failure to assert a cognizable interest in the proceedings, failure to demonstrate that its participation will assist in the determination of the issues, and failure to propose additional issues that do not already comprise part of the affirmative cases of the FCC and the Kintzels, et al.

I. NASUCA has no cognizable interest in the proceedings.

Under 47 C.F.R. § 1.223, a petition to intervene must, inter alia, “set forth the interest of petitioner in the proceedings.” NASUCA’s Petition states that one of its interests consists of “including the perspective of consumers who have been harmed by Buzz.” Petition, p. 1.

However, NASUCA's Petition fails to cite any findings on the merits that such customers were actually harmed, or that they were harmed by Buzz. NASUCA's Petition relies on a single Opinion and Order¹ by the Public Utilities Commission of Ohio, in which the Ohio Commission issued what is essentially a default judgment against Buzz Telecom (one of the entities formerly operated by the Kintzels, et al.), in a proceeding where Buzz did not appear or defend.² After entering its Opinion and Order in Buzz's absence, the Ohio Commission then denied Buzz the right to file a paper in its own defense by rejecting Buzz's submission of a post-hearing brief.³ The reason for the denial was the mere fact that the brief was filed pro se, and not filed by required legal counsel.⁴

If NASUCA wants to assert the rights of customers "who have been harmed by Buzz," it must first obtain findings on the merits that the customers were actually harmed, and that they were harmed by Buzz. To permit NASUCA to proceed without first obtaining an adjudication on the merits of harm and fault would effectively subject the Kintzels, et al., to an assumption of guilt.

NASUCA's Petition does not cite to any Order or judgment showing that its customer complaints were ever adjudicated on the merits to be other than one-sided assertions, untested by cross-examination and unverified by other means. NASUCA's Petition makes no mention that it possesses verification tapes, or other authenticating evidence. Nor does the Petition mention that NASUCA is even seeking to authenticate the complaints. The Petition only cites the Opinion and Order, and mentions "formal proceedings against Buzz" in 18 states, yet makes no mention

¹ *In the Matter of the Commission Staff's Investigation into the Alleged Violations of the Minimum Telephone Service Standards by Buzz Telecom Corporation*, PUCO Case No. 06-1443-TP-UNC, Opinion and Order (October 3, 2007). Available at <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=4da6cec8-7aed-47ae-b361-af21f6a2c380>.

² *Id.* at 3.

³ *Id.* at 3.

⁴ *Id.* at 4.

that any of those proceedings ever resulted in findings of rule violations by the Kintzels, et al. Pet., p. 6.

NASUCA asserts additional interests in protecting customers from “the direct impacts of slamming and deceptive practices” and “seeing that companies under the FCC’s and state commission’s jurisdictions comply with other regulatory practices that support the public interest.” Pet., P. 6. However those interests are redundant with the FCC’s mandate. The FCC’s Enforcement Bureau is charged with deterring slamming and deceptive practices, and ensuring compliance. *See* Show Cause Order, FCC 07-165. Furthermore, a key part of the FCC’s mandate is to protect consumers, as evidenced by the activities of the FCC’s Consumer Inquiries and Complaints Division,⁵ and Consumer Affairs and Outreach Division.⁶ NASUCA’s intervention as a party is simply not necessary, since the FCC is already a party to the proceeding.

NASUCA’s Petition should be denied because it fails to establish that it is indeed seeking to include the perspective of “customers who have been harmed by Buzz,” since it presents no evidence that there was ever an adjudication on the merits that its customers were harmed and that Buzz was at fault. The Petition also fails to establish that NASUCA has an interest in the proceedings that is not entirely redundant with the FCC’s. Thus, NASUCA’s Petition to intervene as a party should be denied for failure to assert a cognizable interest.

**II. NASUCA has failed to demonstrate that its participation will assist
in the determination of the issues.**

Under 47 C.F.R. § 1.223, the petitioner must also demonstrate that its participation will

⁵ Link to the Division’s webpage: http://www.fcc.gov/cgb/cgb_offices.html.

⁶ *Id.*

assist in the determination of the issues. NASUCA offers its “wealth of experience” in seeking official sanctions against Buzz as a qualification for its participation in the instant proceedings. Pet., p. 5. Despite its “wealth of experience,” NASUCA’s Petition offers no citations to adjudications on the merits, only what amounts to a default judgment and formal proceedings in 18 states for which NASUCA offers no citations to any Orders or findings of rule violations by the Kintzels, et al. Pet., p. 6.

If NASUCA is in possession of evidence relevant to the instant proceeding, the FCC is free to obtain that evidence through discovery. NASUCA’s participation as a party is not necessary for that evidence to come to light. Nor will NASUCA’s participation assist in determining whether the FCC customer complaints of unauthorized switching have any basis in fact, since NASUCA is not in a position to verify those FCC customer complaints. NASUCA’s Petition evidences no attempt to verify even its own customer complaints, other than to write them down.

In sum, any evidence that NASUCA possesses can be obtained by the FCC through discovery; NASUCA’s participation as a party is not necessary for that evidence to form part of the FCC’s case. The Petition to intervene as a party should be denied.

III. NASUCA fails to propose relevant additional issues that are not already part of the affirmative cases of the FCC and the Kintzels, et al.

NASUCA’s Petition submits two additional issues: (1) the role played by Buzz’s underlying carrier, and (2) how the carrier change verification rules make it difficult to obtain relief for consumers who claim injury due to Buzz’s actions. Pet., p. 7.

The role played by Buzz’s underlying carrier already forms part of an affirmative defense

that will be offered by the Kintzels, et al. To wit, the Kintzels, et al., shall seek to establish the liability of that underlying carrier in the discontinuance of service allegations against the Kintzels, et al., in the instant proceeding. Show Cause Order, ¶ 11. As for NASUCA's attempt to use the instant proceedings as a test case to discuss what it perceives as the inadequacy of the current verification rules—that is not a legitimate additional issue relevant to the current proceeding, but rather could be exploited by NASUCA to justify lack of evidence against the Kintzels, et al. In other words, by claiming that the Kintzels, et al., weren't held to adequate verification standards, lack of evidence against them could be explained away as an indication that the verification rules were too lax, rather than the failure of the evidence to survive cross-examination and authentication.

NASUCA is free to seek a change in the rules. However, no change in the rules may be retroactively applied against the Kintzels, et al., or anyone else, without raising concerns of constitutional due process violations (i.e., retroactive application of punishment for an act that was not a rule violation at the time of the act).

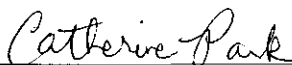
Because denial of NASUCA's Petition would in no way close off NASUCA's freedom to seek a change in the rules, because permitting the issue of the verification rules might prejudice the fair disposition of the case, and because the role played by the underlying carrier already forms part of the Kintzels' affirmative case, NASUCA's Petition should be denied.

IV. Conclusion

Because NASUCA's Petition fails to meet the requirements of asserting a cognizable interest, or of demonstrating how petitioner's participation as a party could assist in determination of the issues, and because the additional issues raised by petitioner either already

form part of the Kintzels' affirmative case or could prejudice the fair disposition of the case, and because NASUCA remains free to pursue other avenues of redress, its Petition to intervene as a party should be denied.

Respectfully Submitted,



Catherine Park (DC Bar # 492812)
The Law Office of Catherine Park
2300 M Street, NW, Suite 800
Washington, D.C. 20037
Phone: (202) 973-6479
Fax: (866) 747-7566
Email: contact@cparklaw.com

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing OPPOSITION OF THE KINTZELS, ET AL., TO THE PETITION TO INTERVENE AS A PARTY OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES (NASUCA) was served on this 16th day of October 2007, by Hand-Delivery, on the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, D.C. 20002

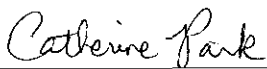
And by U.S. Mail, First Class, on the following:

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C330
Washington, D.C. 20554

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

Kathleen F. O'Reilly
Attorney At Law
414 "A" Street, SE
Washington, D.C. 20003

Counsel to NASUCA



Catherine Park